IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4573 of 1982
with
SPECIAL CIVIL APPLICATION No 3403 of 1984
and
SPEICAL CIVIL APPLICATION No 3408 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ZINIBEN WD/O BHANABHAI FAKIRBHAI
Versus
UNION OF INDIA

Appearance:
1. Special Civil Application No. 4573 of 1982
MS KJ BRAHMBHATT for Petitioner No. 1
NOTICE UNSERVED for Respondent No. 1
MR AJ DESAI AGP for Respondent No. 2-3
2. Special Civil Application No. 3403 of 1984
MR SHIVANG SHUKLA for MR YN OZA ADVOCATE
for Petitioners
MR MI HAVA for Respondent No. 1
MR AJ DESAI AGP for respondent Nos.2-3
MR PRASHANT G. DESAI for respondent No.4.

2. Special Civil Application No. 3408 of 1984
MR SHIVANG SHUKLA FOR MR YN OZA ADVOCATE
for petitioners.
Respondent No.1 served.
MR AJ DESAI AGP for respondent Nos.2 and 3.

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 17/04/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. The common prayer made in each petition filed under Article 226 of the Constitution is to declare that the provisions of proviso to sub-section (2) of Section 18 of the Land Acquisition Act, 1894 ('the Act' for short) prescribing period of limitation for making application for reference are ultra vires and unconstitutional. Therefore, these three petitions are being disposed of by this common judgment.

2. In order to understand the controversy raised in these petitions, it would be relevant to notice the facts as emerging in Special Civil Application No. 4573 of 1982 because the other two petitions, namely, Special Civil Application No. 3403 of 1984 and Special Civil Application No.3408 of 1984 which involve similar points have been directed to be heard alongwith Special Civil Application No. 4573 of 1982.

3. The petitioner in Special Civil Application No. 4573 of 1982 was owner of land bearing S.No. 19/1 admeasuring 2 Acres 26 Gunthas situated at village Rundh of Taluka Chorasi, District Surat. The land of the petitioner and other lands were needed for public purpose of rehabilitation of flood affected persons. Therefore, the State of Gujarat had issued notification under Section 4 of the Act on November 22, 1973. Having regard to the urgency involved in achieving the public purpose, urgency clause was also applied by the State Government as contemplated under Section 17 (1) of the Act on December 20, 1973 and possession of the lands needed for public purpose was taken on December 20, 1973. The petitioner was also paid an advance compensation of Rs.69,140/- on December 20, 1973.

4. The respondent No.3, that is, the Special Land Acquisition Officer, Surat, had issued individual notices

calling upon the interested persons to make the claim of compensation. Such notice was also served on the petitioner. The Land Acquisition Officer by his award dated May 25, 1978 awarded compensation to the petitioner at the rate of Rs.6.25 Ps. per sq. yd. By the award it was declared that the petitioner would be entitled to compensation of Rs.92,186.77 np. As noticed earlier, the petitioner was paid an advance compensation of Rs.69,140/- on December 20, 1973 and, therefore, after deducting the said amount, the petitioner was paid a sum of RS.23,046.73 np.

5. The petitioner was of the view that the compensation offered by the Land Acquisition Officer vide his award dated May 25, 1978 was inadequate. He, therefore, made an application on August 29, 1978 under Section 18 of the Act with a request to refer the matter to the Reference Court for determination of adequate compensation. The said application was rejected by the respondent No.3 by order dated September 17, 1978 on the ground that it was time barred. The order passed by the respondent No.3 is produced by the petitioner at Annexure B to the petition.

6. Again on November 17, 1978 the petitioner filed another application before the respondent No.3 under Section 18 of the Act and requested him to refer the matter to the Reference Court for determination of adequate compensation but the second application was also rejected by the respondent No.3 vide his order dated August 12, 1980. Thereupon the petitioner made an application to the then Chief Minister on July 25, 1980. Surprisingly, the respondent No.3 referred the matter to the District Court for determination of compensation.

7. The Reference Court rejected the reference by judgment and order dated December 15, 1981 holding, inter alia, that the respondent No.3 had no power to review his earlier decisions and that the application for reference was time barred.

8. Feeling aggrieved by the judgment of the Reference Court, the petitioner had preferred First Appeal No.1359 of 1982. The said appeal has been disposed of by a Division Bench vide judgment dated December 11, 1996 as withdrawn with liberty to revive the appeal in case Special Civil Application No. 4573 of 1982, i.e., instant petition filed by the petitioner is allowed by the Court.

9. Though the petitioner had preferred an appeal

against the judgment of the Reference Court, the petitioner was of the opinion that the provisions requiring her to make an application within the time prescribed in the proviso to sub-section (2) of Section 18 of the Act were violative of her rights guaranteed under Article 300-A of the Constitution and, therefore, the instant petition is filed. According to the petitioner, the constitutional right to hold property cannot be destroyed except by the authority of law and as proviso to sub-section (2) of Section 18 places unreasonable restriction on the petitioner to prefer an application for reference within the time stipulated therein, the said provision is bad in law. What is averred by the petitioner in the petition is that the requirements as contained in Section 18 (1) and 18 (2) read with proviso, are procedural in nature but the requirement of making an application within the period of limitation adversely affects her valuable right to hold property and, therefore, proviso to sub-section (2) of Section 18 of the Act should be declared as ultra vires the provisions of Article 14 of the Constitution. It is claimed by the petitioner that the petitioner has right to get just compensation for her land which is acquired by the State and as the procedural hazards have violated her right guaranteed under Article 19 (1) (g) of the Constitution, the same should be struck down by the Court. Under the circumstances, the petitioner has filed instant petition and prayed the Court to declare that the provisions contained in proviso to sub-section (2) of Section 18 is ultra vires and unconstitutional. The petitioner has further prayed to issue a writ of mandamus directing the respondent No.3 to make reference to the Court under section 18 (1) of the Act on the basis of the application dated August 29, 1978 made by the petitioner before him.

10. The facts in Special Civil Application No. 3403 of 1984 and Special Civil Application No.3408 of 1984 are almost similar and, therefore, they have not been narrated in detail while delivering the judgment.

11. Mr. Shivang Shukla, learned advocate appearing on behalf of the petitioners in Special Civil Application No. 3403 of 1984 and Special Civil Application No.3408 of 1984 submitted that the petitioners' constitutional right to hold property cannot be destroyed except by the authority of law providing for payment of just compensation and as right of the petitioners to receive just compensation is virtually taken away by prescribing period of limitation under proviso to sub-section (2) of Section 18 of the Act, the same should be declared to be

ultra vires. It was argued that the provisions contained in Section 18 making time as an essential condition for getting just compensation for the land acquired are unreasonable, unjust, unfair as well as arbitrary and, therefore, the prayers made in the petitions should be granted. It was stressed that requirements as contained in section 18 (1) and 18 (2) read with proviso to Section 18 (2) of the Act prescribing the period of limitation for making application for reference cannot be permitted to affect substantive right of the petitioner to receive just compensation and, therefore, the provisions of Section 18 sub-section (2) of the Act should be declared to be ultra vires. It was also argued that the period of limitation prescribed under section 18 of the Act for making application against the decision of the Land Acquisition Officer is not only unreasonable but shorter than the period prescribed under the Limitation Act, 1963 for initiating proceedings either challenging the order of the Officer of the Government or for making any application under any other law and, therefore, the provisions contained in Section 18 of the Act being ex-facie discriminatory should be declared to be ultra vires Article 14 of the Constitution.

12. Mr. A.J.Desai, learned A.G.P. appearing for the respondents Nos.2 and 3 submitted that the period of limitation prescribed under Section 18 (2) of the Act cannot be regarded as unreasonable or arbitrary and, therefore, the petitions should be dismissed. It was emphasised that the object of the Law of Limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by party's own inaction, negligence or laches and, therefore, submissions advanced on behalf of the petitioners, having no force, should not be accepted.

13. We have considered the submissions advanced by the learned advocates of the parties at the bar and the documents forming part of the petitions as well as relevant statutory provisions. Section 18 of the Act, which is subject matter of challenge in instant petitions, reads as under:

> "18. Reference to Court.-- (1) Any person interested who has not accepted the award may by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the

compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,--

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

A bare reading of Section 18 of the Act makes it more than clear that existence of an award is essential for making reference under Section 18 of the Act. A reference under Section 18 of the Act is limited to measurement of the land, quantum, the persons to whom it is payable or the apportionment of compensation. Finality of award of the Land Acquisition Officer can be questioned only by resorting to provisions of section 18 of the Act. Sub-section (1) of Section 18 inter-alia provides that any person interested but has not accepted the award may by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation amongst the persons interested. As provided by sub-section (2) of Section 18 of the Act, the application has to state the grounds on which objection to the award is taken. What is important is that under the proviso to sub-section (2) of Section 18, application under Section 18 (1) has to be made within six weeks from the date of the Collector's award if the person making it was present or represented before the Collector at the time when the award was made and in other case, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period expires first.

14. If one looks at the scheme envisaged by the Act

it becomes at once clear that the validity of the acquisition itself is dependent upon due observance of the provisions of Sections, 4, 6 and 11A of the Act which are substantive in nature. As against these provisions, provisions contained in Sections 9, 11, 12, 15, 16, 17 (3), (3A), (3B), 17-A, 18, 19, 23, 24, 29, 31, 32-A, 34 and 50 which relate to determination and payment of compensation and interest thereon are subsidiary provisions. If the amount of compensation is not determined in accordance with the provisions of the Act, consequence is provided by the Act itself. The land holder has a right to apply for reference to the Court. The right to get the compensation determined by the court is a statutory right conferred by Section 18 of the Act and can be exercised subject to the limitations provided therein.

15. At this stage, it would be relevant to notice the legislative history. Section 18 of the Land Acquisition Act, 1894, corresponds to Section 15 of the old Act X of 1870 and therein no period of limitation was prescribed for making application for reference. The old Act of 1870 was not, in practice, found entirely effective for the protection of either the persons interested in lands acquired or of the public purse. The requirement of old Section 15 that the Collector should refer for the decision of the Court, every petty difference of opinion as to value, and every case in which any one or perhaps a large number of persons failed to attend before him, had involved in litigation, with all its trouble and delay and expense, a great number of persons whose interest in the land was extremely insignificant. Further, the provisions of the Act of 1870, as to the incidence of costs, the whole of which fell on the Collector if the final award was ever so little in excess of the amount of his tender, were such as to encourage extravagant and speculative claims. The chance of altogether escaping the payment of costs was so great that claimants were in the position of risking very little, in order to gain very much, and had, therefore, every motive to refuse even liberal offers made by the Collector and to try their luck by compelling a reference to the Court. Much the same can be said as to the provisions of the law then existing regarding payment of interest. All these cost a very heavy and undeserved burden on the public purse. In order to overcome above-referred to difficulties, The Land Acquisition Act, 1894 was enacted. The object of the Act, inter-alia, is to amend the law for determining the amount of compensation to be paid on account of acquisition of land needed for public purpose. Viewed in this light, the proviso to sub-section (2) of Section 18

of the Act, prescribing period of limitation, cannot be regarded as arbitrary or unreasonable.

16. The object of law of limitation is in accordance with the maxim "interest reipublicae ut sit finis litium" i.e., the interest of the State requires that there should be an end to litigation. Statutes of limitation and prescription are statutes of peace and repose. Rule of vigilance which is foundation of statute of limitation rests on principles of public policy. The purpose of rules of limitation is to induce the claimants to be prompt in claiming relief. Parties who seek to uphold their legal rights should be vigilant and should consult their legal experts as quickly as possible. They cannot sleep over the matter and, at a later stage, seek to enforce their rights, which is likely to cause prejudice to their opponents. This is precisely the reason why periods of limitation are prescribed in many statutes. The rules of limitation are not meant to destroy the rights of parties; they are meant to see that parties do not resort to dilatory tactics but seek their remedy within the time fixed by the Legislature. The limitation for institution of a legal action is a limitation on the availability of a legal remedy during a certain period of time. Different periods are prescribed for various remedies. The idea is that every legal action must be kept alive for a legislatively fixed period of time. The object of legal remedy is to repair a damage caused by reason of a legal injury suffered by the suitor. It is a mistake to construe the law of limitation from the point of the merits or demerits of the parties before the Court, or on the ground that it works an amount of hardship or injustice in a particular case. In its true nature, the law of limitation is a technical law and has to be construed accordingly. If the Court comes to the conclusion that the Legislature has clearly intended that a particular action should be barred after the lapse of a particular period, it must give effect to that provision of law however meritorious the claim and however illdeserved the defence to the claim may be. Having regard to these salutary principles of interpretation of statutes, we are of the opinion that prescription of period of limitation for making reference is not unconstitutional at all. Further, prescription of shorter period of limitation for making reference cannot be considered unreasonable in view of the laudable object of the legislature to see that just compensation is paid to the claimant as determined by reference court without any loss of time or unreasonable delay on the part of the claimant. Therefore the submission that period of limitation prescribed under Section 18 of the Act, which,

according to the petitioner, is shorter than the period prescribed under the Limitation Act for initiating proceedings against an order of officer of the Government or for making any application under any other law is ultra vires, cannot be accepted. Further, if longer period of limitation is prescribed, the Government would be required to pay more interest as contemplated by different provisions of the Land Acquisition Act and, therefore, prescription of shorter period of limitation cannot be regarded as illegal or arbitrary. The period of limitation fixes the life span of a legal remedy for the redress of a legal injury. Thus prescription of period of limitation for making application for reference to competent court can never be regarded as unreasonable restriction on the right to receive just compensation. The period of limitation prescribed for making the application for reference is neither demonstrated to be unreasonable nor shown to be capricious, arbitrary or illegal.

17. At this stage it would be advantageous to refer to Full Bench decision of this Court in Memon Ibrahim Haji Latif Sukhediwala v. Officer on Special Duty (Land Acquisition) and another, 1994 (1) GLR 296. In that case the Full Bench has taken the view that the provisions of Section 5 of the Limitation Act, 1963 will apply only to applications to Courts and as the Collector under section 18 of the Act discharges only administrative functions and not judicial functions and has no character of a Court, he has no power to condone the delay caused in making application for reference. What is ruled by the Full Bench of this Court is that if the Collector commits an error in making the reference in that he has not adhered to the fulfillment of the conditions, the Court dealing with the reference can, still, examine it and throw out the reference, if it is found that the conditions have not been fulfilled.

18. Again, in Officer on Special Duty (Land Acquisition) and another v. Shah Manilal Chandulal and others, (1996) 9 SCC 414, the Supreme Court has authoritatively laid down the proposition of law that in view of the specific limitation provided in proviso to section 18 (2) of the Land Acquisition Act, sub-section (2) of Section 29 of the Limitation Act, 1963 cannot be applied to the proviso to sub-section (2) of Section 18 of the Act and the Collector/ Land Acquisition officer who is not a court cannot condone the delay caused in making application for reference. Neither the Full Bench of this Court nor the Supreme Court has found that prescription of period of limitation for making

application for reference is arbitrary.

19. Having regard to the proposition laid down by the Supreme Court, we are of the opinion that the reference court did not commit any error in dismissing the reference on the ground that the Special Land Acquisition Officer had no power to review his earlier orders and that the application for reference was time barred.

20. On over all view of the matter, the Court is satisfied that the proviso to section 18 (2) of the Act requiring the affected person to make application within the time prescribed therein cannot be regarded as unreasonable or arbitrary or illegal and, therefore, the petitioners are not entitled to the reliefs claimed in the petitions.

21. The net result of the aforesaid discussion is that there is no substance in any of the petitions and the petitions are, therefore, liable to be dismissed.

22. For the foregoing reasons, all the petitions fail and are dismissed. Rule issued in each petition is discharged. There shall be no orders as to cost.

(J.M. Panchal, J.)

(A.M. Kapadia, J.)
(karan)